

Federal Communications Commission

DA 99-1369

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

**Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Las Vegas, Nevada)**

MM Docket No. 99-252
RM-9648

NOTICE OF PROPOSED RULE MAKING

Adopted: July 13, 1999

Released: July 14, 1999

Comment Date: September 7, 1999

Reply Comment Date: September 22, 1999

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Journal Broadcast Corporation ("Journal"), licensee of station KTNV, NTSC Channel 13, Las Vegas, Nevada. Journal requests the substitution of DTV Channel 12 for its assigned DTV Channel 17.¹

2. Journal states that the substitution of DTV Channel 12 for station KTNV will yield a net gain in interference free television service. It claims that the proposed change will enable station KTNV to avoid the extra cost of purchasing a UHF transmitter and other equipment. Furthermore, Journal states that the allotment of DTV Channel 12 could be made without disrupting any of the other DTV allotments made in the Allotment Reconsideration Order.

3. We believe Journal's proposal warrants consideration. DTV Channel 12 can be substituted and allotted to Las Vegas, Nevada, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35-56-43 N and 115-02-32 W. In addition, we find that this channel change is acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2). As requested, we also propose to modify KTNV's

¹ This petition was initially filed as a Petition for Further Reconsideration and Request for Declaratory Ruling seeking reconsideration of the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, ("Allotment Reconsideration Order"), 13 FCC Rcd 7418 (1998). In that proceeding, Journal's request to change its DTV allotment was denied based upon the Commission's belief that the use of Channel 12 for KTNV's DTV service would impact and cause increased interference to other stations. However, upon further review, the Commission determined that Journal's request would be more appropriately handled as a petition for rule making. See Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1999). In light of that action, we issue this Notice to seek comment regarding Journal's request to change its initial DTV channel assignment.

authorization to specify operation on the alternate DTV channel with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
NV Las Vegas	12	26.4	610

4. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Las Vegas, Nevada	2, 7, 11c, 16c, 17, 22c, 29	2, 7, 11c, 12, 16c, 22c, 29

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before September 7, 1999, and reply comments on or before September 22, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John T. Scott, III
 Jessica R. Herrera
 Crowell & Moring LLP
 1001 Pennsylvania, NW
 Washington, D.C. 20004-2595
 (Counsel for Journal Broadcast Corporation)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, D.C.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, D.C.